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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/767,594

01/28/2004

Virgil L. Collins

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EXAMINER

ADAMS, GREGORY W

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/767,594	COLLINS, VIRGIL L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gregory W. Adams	3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 & 5-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1, lines 9-10, recite that a carriage has no means to directly connect to a container or other structure. (See also claim 5, lines 9-10; claim 6, lines 9-10; claim 7, lines 9-10; claim 8, lines 9-10.) Claim 1 lacks enablement because Applicant's Specification Page 10, lines 15-16 requires a carriage jib 18 or hook 19 to attach to a container, without which Applicant's invention lacks a way to connect to a container such that said container could be loaded onto a vehicle. For examination purposes, it is assumed that Applicant meant that besides a jib or hook that there is no other carriage structure that attaches to a container.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooley (US 3,272,546) in view of Nijenhuis (US 4,802,811) and Raisio (US 5,163,800) (previously cited).

With respect to claims 1-2, Cooley discloses an elongated body 12, rectangular carriage 31 that remains in a linear plane, multi-stage central hydraulic cylinder 41, means 44 for releasably engaging a container or other structure, a first pair of hydraulic cylinders 14, 16, and a hook 44 and does not disclose rollers, jib and a second pair of hydraulic cylinders attached to a carriage and engaging means. Nijenhuis discloses rollers 12, a jib and hook lift 19 attached to a carriage 13 that is slidably attached to an elongated body outside. Nijenhuis teaches vertically and horizontally movable gripping means for gripping an interchangeable container and bringing it from a lower level onto a supporting surface on a vehicle or other support, and for removing it therefrom. Col. 1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Cooley's apparatus to include a jib and hook lift attached to a carriage and rollers, as per the teachings of Nijenhuis, to grip containers having various gripping means.

Raisio discloses a second pair of hydraulic cylinders 85 enabling pivoting of a hook 83, 84 relative to its base to load cargo having a substantially plane bottom and flexibility in locating of a load hook 84. Col. 1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify

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Cooley's apparatus to include a second pair of hydraulic cylinders 85, as per the teachings of Raisio, for flexibility in loading plane bottomed loads.

2. Claims 3-8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooley (US 3,272,546) in view of Nijenhuis (US 4,802,811), Raisio (US 5,163,800) and Marmur (US 5,203,668).

With respect to claims 3-4, Cooley discloses a carriage but does not disclose a cable sheave. Marmur discloses a cable sheave 19 for a cable 20 that attaches to a container or other structure such that the cable will be merely fixedly secured with respect to the container and the lower frame during movement of the upper frame which greatly minimizes capital costs and provides an easily maintained and a quick and efficient operation device which facilitates loading and unloading of a container structure. Col. 1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cooley's apparatus to include a sheave, as per the teachings of Marmur, to reduce container loading costs.

With respect to claims 5-7, Cooley discloses an elongated body 12, rectangular carriage 31 that remains in a linear plane, multi-stage central hydraulic cylinder 41, means 44 for releasably engaging a container or other structure, a first pair of hydraulic cylinders 14, 16, and a hook 44 and does not disclose rollers, jib and a second pair of hydraulic cylinders attached to a carriage and engaging means. Nijenhuis discloses rollers 12, a jib and hook lift 19 attached to a carriage 13 that is slidably attached to an elongated body outside. Nijenhuis teaches vertically and horizontally movable gripping means for gripping an interchangeable container and bringing it from a lower level onto

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a supporting surface on a vehicle or other support, and for removing it therefrom. Col. 1.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Cooley's apparatus to include a jib and hook lift attached to a carriage and rollers, as per the teachings of Nijenhuis, to grip containers having various gripping means.

Raisio discloses a second pair of hydraulic cylinders 85 enabling pivoting of a hook 83, 84 relative to its base to load cargo having a substantially plane bottom and flexibility in locating of a load hook 84. Col. 1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cooley's apparatus to include a second pair of hydraulic cylinders 85, as per the teachings of Raisio, for flexibility in loading plane bottomed loads.

Cooley discloses a carriage but does not disclose a cable sheave. Marmur discloses a cable sheave 19 for a cable 20 that attaches to a container or other structure such that the cable will be merely fixedly secured with respect to the container and the lower frame during movement of the upper frame which greatly minimizes capital costs and provides an easily maintained and a quick and efficient operation device which facilitates loading and unloading of a container structure. Col. 1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cooley's apparatus to include a sheave, as per the teachings of Marmur, to reduce container loading costs.

With respect to claim 8, Cooley discloses an elongated body 12, carriage 31, multi-stage central hydraulic cylinder 41, means 44 for releasably engaging a container

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or other structure, a first pair of hydraulic cylinders 14, 16, and a hook 44 and does not disclose rollers, jib and a second pair of hydraulic cylinders attached to a carriage and engaging means. Nijenhuis discloses rollers 12, a jib and hook lift 19 attached to a carriage 13 that is slidably attached to an elongated body outside and has friction reducing mechanism 15'. Nijenhuis teaches vertically and horizontally movable gripping means for gripping an interchangeable container and bringing it from a lower level onto a supporting surface on a vehicle or other support, and for removing it therefrom. Col. 1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Cooley's apparatus to include a jib and hook lift attached to a carriage and rollers, as per the teachings of Nijenhuis, to grip containers having various gripping means.

Raisio discloses a second pair of hydraulic cylinders 85 enabling pivoting of a hook 83, 84 relative to its base to load cargo having a substantially plane bottom and flexibility in locating of a load hook 84. Col. 1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cooley's apparatus to include a second pair of hydraulic cylinders 85, as per the teachings of Raisio, for flexibility in loading plane bottomed loads.

Cooley discloses a carriage but does not disclose a cable sheave. Marmur discloses a cable sheave 19 for a cable 20 that attaches to a container or other structure such that the cable will be merely fixedly secured with respect to the container and the lower frame during movement of the upper frame which greatly minimizes capital costs and provides an easily maintained and a quick and efficient operation

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device which facilitates loading and unloading of a container structure. Col. 1.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cooley's apparatus to include a sheave, as per the teachings of Marmur, to reduce container loading costs.

### ***Response to Arguments***

Applicant's arguments filed March 15, 2006 have been fully considered but they are not persuasive.

With respect to claims 1-8, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an elongated body that spans the entire length of the vehicle body) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is noted that a vehicle length includes at times a driver compartment as well as an engine compartment. Thus, "spanning an entire vehicle length" by definition requires an elongated body to cover a vehicle length defined by a length starting with a driver compartment/engine compartment and extending to the opposite end, e.g. from bumper to bumper, which Applicant's FIG. 1 does not appear to disclose.

Cooley's carriage comprises not only element 31 but also slides 50 which remain in a plane defined by elongated body 12 sliding from a front to a rear or rear to front depending on loading. Further, slides 50 have no way to connect to a container because they merely slide leaving connection to element 31. Cooley's central cylinder



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41 is responsible for moving carriage 31 "rectilinearly along the frame members 17 and 18". C2/L44-47. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., securing a carriage at a point more than 50% (or at 60%) of the length of the trailer) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant next argues that Cooley does not disclose a carriage that "has no means to directly connect to a container or other structure" as recited in claim 1. Although there is no enablement within Applicant's specification for no "connection" Cooley's carriage 50 does not connect to a container. It is hook 31 which does the actually connecting. Given that this parallels Applicant's Specification page 15, lines 15-16 and FIG. 17, Cooley's carriage reads on claim 1 as recited.

In response to applicant's argument that the cited prior art cannot be combined for its treatment of different styles of container engagement, the fact that applicant has recognized a disadvantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). A discussion of Cooley's hook or style of container engagement is irrelevant because Nijenhuis modifies Cooley's carriage instead, e.g. structure 50: Nijenhuis discloses rollers 12 and a jib and hook lift 19 attached to a carriage 13 slidably attached to an elongated body outside for gripping an interchangeable container and bringing it from a

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lower level onto a supporting surface on a vehicle or other support, and for removing it therefrom.

With respect to the Raisio reference, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Raisio is merely offered for the proposition that it presents: Increasing the range of container size loaded by adding the ability to locate a hook depending on X-Y-Z coordinates of the container loading bar. Moreover, the location of cylinders to a stationary or moving frame is irrelevant, as claim 1 does not recite such a feature. However, it is noted that Raisio's cylinders mount to Cooley's carriage replacing hook 31. Thus, they are mounted to a moving frame.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

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1971). The cited prior art is at least analogous for discloses systems for loading or unloading. Thus they are properly combined.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,409,903 to Wilhelmsson and US 4,704,063 to Updike et al. disclose a carriage that moves along an elongated body from front to rear and back again.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th., 8:00-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GWA



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